

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

**THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU  
&  
THE HONOURABLE MR. JUSTICE K.T.SANKARAN**

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

**TRC.No. 120 of 2000()**

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TA.No.1125/1999 of SALES TAX APPELLATE TRIBUNAL,  
ADDL.BENCH II, ERNAKULAM  
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PETITIONER:

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THE COCHIN MALABAR ESTATES AND INDUSTRIES LIMITED,  
MALABAR HOUSE, 56, BRISTOW ROAD, WILLINGDON ISLAND,  
KOCHI 682 003.

BY ADV. SRI.JOSE JOSEPH

RESPONDENT:

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THE STATE OF KERALA.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 08/08/2007,  
ALONG WITH TRC NO. 116 OF 2000 AND CONNECTED CASES,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**H.L. DATTU, C.J. & K.T. SANKARAN, J.**

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**T.R.C. Nos. 116, 120, 121,122 AND 123 OF 2000**  
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**Dated this the 8<sup>th</sup> August , 2007**

**ORDER**

**H.L. Dattu, C.J.:**

These Tax Revisions Cases arise under the provisions of the Central Sales Tax Act. In all these Revision Petitions, the assessee is common and the revisional authority as well as the Tribunal have also disposed of the matters by a common order. Therefore, all these Revision Petitions are clubbed together, heard and disposed of by a common order.

2. The assessment proceedings are under the provisions of the Central Sales Tax Act for the assessment years 1988-89 to 1992-93.

3. The facts in brief are:- The petitioner is a plantation company . It is registered both under the provisions of the Kerala General Sales Tax Act 1963 (hereinafter referred to as 'Act 1963' ) and the provisions of the Central Sales Tax Act 1956 (hereinafter referred to as 'Act 1956'). The Petitioner/Company has effected inter-state sales of raw rubber produced/manufactured in their industrial unit. The assessing authority - the Assistant Commissioner (Assessment), Special Circle (Produce), Mattancherry has completed the assessment proceedings under the provisions of the Act by taking into account the aggregate of sale price received and receivable by the petitioner in respect of interstate sales and has levied tax on the said transaction.

Subsequently, the orders of assessment so passed were re-opened by the revisional authority by invoking his powers under section 35 of the Act, 1963 , on the ground that element of cess under Rubber Act, 1947 has not been included in the sale price resulting in escapement of turnover in view of the law declared by the Apex Court in **State of Kerala vs. Madras Rubber Factory Ltd.**( [1998] 108 STC 583). The order so passed by the revisional authority was the subject matter of the appeals before the Tribunal in T.A.Nos.1122 to 1126 of 1999. The Tribunal has rejected the appeals, by its order dated 20.11.1999. Aggrieved by the orders passed by the Tribunal, the assessee is before us in these Tax Revision Cases, filed under section 41 of the Act, 1963.

4. The assessee has raised the following question of law for our consideration and decision; they are as under:

*“i) Whether the Deputy Commissioner is competent to revise any assessment order passed under the Central Salestax Act invoking Section 35 of the K.G.S.T. Act in the absence of any provision in the C.S.T.Act conferring revisional jurisdiction.?*

*ii) Whether on a proper and correct interpretation of Section 9(2) of the C.S.T. Act and Rules 6(7) and 6(8) of the CST (Kerala)Rules, the Deputy Commissioner in exercise of the powers under Section 35 of the K.G.S.T.Act has any authority or power to direct the Assessing Authority to assess any escaped turnover under the CST Act after the period of limitation prescribed in Rule 6(7) and 6(8) of the CST (Kerala) Rules?*

iii) *Whether the Tribunal is correct in holding that Rubber Cess element is rightly included in the interstate sales turnover? Is not the finding illegal, and unsustainable on a correct and proper interpretation of Sections 2(g), 2(h), 2(j), 6 and 8A of the C.S.T. Act?*

iv) *Whether the Tribunal is correct in applying the principle laid down by the Supreme Court in the decision reported in 108 S.T.C. 583 in deciding the issue in the case with substantial situational difference?*

v) *Is not the decision of the Supreme Court reported in 108 S.T.C. 583 distinguishable on facts?*

vi) *Is not the Tribunal erred in proceeding as if the definition of the terms 'sale', 'sale price' and 'turnover' under K.G.S.T.Act and C.S.T.Act are essentially the same?"*

5. The assessment proceedings has been completed by the assessing authority for the assessment years 1988-89 to 1992-93 under the provisions of the CST Act. While completing the assessments, the assessing authority had not included the cess paid by the assessee in the taxable turnover of the assessee. After the decision of the Apex Court in **State of Kerala vs. Madras Rubber Factory Ltd.** ([1998] 108 S.T.C. 583), the revisional authority, in exercise of his powers under section 35 of the Act, 1963, had issued a show cause notice to the assessee directing him to show cause as to why the orders of assessment passed by the assessing authority

for the aforesaid assessment years should not be revised and why the matter should not be remanded back to the assessing authority to re-do the matter in accordance with law and in consonance with the observations made by the Apex Court in **State of Kerala vs. Madras Rubber Factory Ltd.** The assessee had filed its detailed objections to the show cause notice so issued by the revisional authority. The revisional authority, after considering each one of the objections so filed by the assessee, has come to the conclusion that under section 35 of the Act, 1963, the revisional authority has jurisdiction to invoke his powers to bring to tax the escaped turnover in the order of assessment passed under the provisions of C.S.T. Act by virtue of Section 9 (2) of the Act.

6. Aggrieved by the findings and the conclusions reached by the revisional authority, the assessee had carried the matter by way of second appeals before the Sales Tax Appellate Tribunal in T.A.Nos. 1122 to 1126 of 1999. The Tribunal, by its order dated 20<sup>th</sup> November 1999, after considering all the grounds urged by the assessee has rejected the appeals. While holding that the revisional authority can exercise its powers under section 35 of the Act, 1963 to bring to tax the escaped turnover, it had relied upon the observations made by the various High Courts and also the language employed in section 9 (2) of the C.S.T. Act and has proceeded to hold that the Deputy Commissioner being an assessing authority under Kerala General Sales Tax Act, is competent to invoke the revisional powers under section 35 of the K.G.S.T. Act, 1963, in respect of C.S.T. assessment order as well.

7. In so far as the scope of revisional powers, the Tribunal, in paragraph 19 of its order, has stated that the revisional authority can invoke its powers under section 35 of the Act, 1963 to bring to tax the escaped turnover. To arrive at that conclusion, the Tribunal has relied upon the decision of the Full Bench of this court in **Madras Rubber Factory Ltd. vs. State of Kerala** ([1979] 44 S.T.C. 208) and the decision of the Division Bench of this court in **Roy Jacob vs. State of Kerala** ([1998] 109 S.T.C. 51). In the **Madras Rubber Factory Ltd vs. State of Kerala,** the Full Bench of this court has stated as under:

*“The power of assessing escaped turnover under section 19 of the Kerala General Sales Tax Act, 1963, and the power of revision under section 35 are two distinct and separate powers. They have been conferred on two different authorities, the power of revision being conferred on a superior authority. A valid exercise of the revisional power is not an infringement of the power of assessing escaped turnover. There is no bar or inhibition against getting at escaped turnover in exercise of the revisional power under section 35, so long as the grounds for exercise of that power are made out, viz., that the order is vitiated by illegality, irregularity or impropriety.”*

8. Following the Full Bench decision of this Court, a Division Bench of this court in **Roy Jacob vs. State of Kerala** ([1998] 109 S.T.C. 51) has stated as under:

*“The exercise of powers under section 35 of the Kerala General Sales Tax Act, 1963 by the Deputy Commissioner, when admittedly escapement was detected after the completion of the assessment for the year 1990-91, was correct and proper.”*

9. Shri Jose Joseph, learned counsel for the petitioner/assessee would contend that the revisional authority, by invoking his powers under section 35 of the Act, 1963 is not authorised to bring to tax the escaped turnover, if any, in the assessment orders passed under the provisions of C.S.T. Act. Alternatively, it is contended by the learned counsel that if there is any escaped turnover, the same can be brought to tax by the assessing authority, by invoking his powers under section 19 of the Act and that cannot be done by the revisional authority.

10. In so far as the second contention, raised by the learned counsel for the petitioner/assessee, in our opinion, that issue is no more res integra, in view of the law declared by the Division Bench of this court, to which we have already made a reference in the earlier paragraph. Therefore, the submission of the learned counsel on the second issue need not be considered by us, since it is only academic.

11. To answer the first issue raised by the learned counsel for the petitioner, firstly we need to notice the provisions of Section 9(2) of the C.S.T. Act. Therefore, the said provision is extracted and it reads as under:-

*“Subject to the other provisions of this Act and the rules made thereunder the authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax*

*under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, re-assess, collect and enforce payment of tax, including any interest or penalty , payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law , including provisions relating to returns, provisional assessment advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references , refunds, rebates, interest or penalty , charging or payment of interest compounding of offences and treatment of documents furnished by a dealer as confidential shall apply accordingly.*

*Provided that if any State or part thereof there is no general sales tax law in force , the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section.”*

12. Sub-section (2) of Section 9 vest the power with state authorities to assess or re-assess tax, levy penalties, deal with appeals and other remedies, recover the tax as finally determined and carry out all other functions necessary in those matters. Therefore, the Deputy Commissioner was competent to invoke his revisional powers under Section 35 of the K.G.S.T.

Act in respect of assessment orders passed under the C.S.T. Act. In the instant case, as we have already noticed, there was escapement of turnover under the provisions of the Act. In order to bring to tax the escaped turnover, the revisional authority has exercised his powers under section 35 of the Act, 1963 in view of the decision of the Apex Court in the case of **State of Kerala vs. Madras Rubber Factory Ltd** ([1998] 108 STC 583 ). Therefore, we are of the opinion, firstly the Deputy Commissioner of Commercial Taxes was justified in invoking his revisional powers to bring to tax the escaped turnover in the assessment orders passed under the C.S.T. Act.

13. In the appeal filed by the assessee, the Tribunal has raised two issues for its consideration and decision. They are, whether the Deputy Commissioner was competent to invoke his revisional powers in respect of an assessment completed under the C.S.T. Act and that the cess paid under the Rubber Act does not form part of interstate sales turnover of the producer of rubber, even if it may form part of the purchase turnover of a rubber dealer. The Tribunal by its well considered order has answered both the issues against the assessee. On issue No.1, the Tribunal has observed:

“We may note the powers for reviews, revisions and references are provided in the latter portion of Section 9(2) of the CST Act on equal footing. in the above two cases, we have seen that the courts have held that the provisions for reference under State Act could be invoked in respect of liability under Central Sales Tax by virtue of Section 9(2) of CST Act. The revision power of Deputy Commissioner is similar to the power of the Commissioner for entertaining reference applications. Therefore, we have no hesitation to hold that the Deputy Commissioner can legally invoke the suo motu revision power under Section 35 of the KGST read with

Section 9(2) in respect of an assessment order passed under CST Act. Further, the Deputy Commissioner is also an assessing authority under the KGST Act empowered to assess, re-assess, collect and enforce payment of any tax under the General Sales Tax Law of the State. Revision proceedings in relation of re-opening of assessment is initiation of or continuation of proceedings for assessment, re-assessment, collections and enforcement of payment of tax. Section 9(2) of the CST Act authorises the authorities empowered under the General Sales Tax Law of the State to exercise all the powers they have under the general sales tax law of the State, including provisions relating to revision in respect of assessment, re-assessment, collection and enforcement of tax due under CST Act. The Deputy Commissioner being an assessing authority under the Kerala General Sales Tax Act, Deputy Commissioner is competent to invoke the revisional powers under Section 35 of the KGST Act in respect of a CST assessment order as well. The Deputy Commissioner has not therefore over stepped his jurisdiction as contended by the counsel for the appellant. The revision orders are hence valid and as authorised by law.”.

14. In our view, the reasonings and the conclusion reached by the Tribunal is in accordance with what we have observed in the course of our order. Therefore, no exception can be taken to the findings and conclusion reached by the Tribunal on this issue. Therefore, we confirm the findings of the Tribunal on this issue.

15. In so far as the second issue that they have raised for their consideration, is now squarely covered by the decision of Apex Court in the case of **State of Kerala vs. Madras Rubber Factory Ltd.** (1998) 6 KTR 118 (SC). Applying the principles laid down in that case, the Tribunal has answered this issue against the assessee. We do not think that the Tribunal has gone wrong in applying the principles laid down in **Madras Rubber**

**Factory's** case to answer the second issue against the assessee.

16. In view of the aforesaid discussion, the orders passed by the authorities under the Act and the Tribunal requires to be sustained by us. Accordingly, the revision petitions requires to be rejected and they are rejected. Pending C.M.Ps are also disposed of.

Ordered accordingly.

**H.L. DATTU,  
CHIEF JUSTICE.**

**K.T. SANKARAN,  
JUDGE.**

**lk/dk**

**T.R.C. Nos. 116, 120, 121,122 AND 123 OF 2000**

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**H.L. DATTU, C.J.&  
K.T. SANKARAN, J.**

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of 2000**

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**Dated this the 8<sup>th</sup> August, 2007**

**ORDER**

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